

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. T-05/08-223  
 )  
 Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Office of Vermont Health Access (HEAU) reducing the number of sessions of in-home occupational therapy (OT) for her son, N.R. The issue is whether HEAU's decision is supported by a preponderance of evidence.

## FINDINGS OF FACT

1. N.R. is a five-year-old boy who has been diagnosed with autism. He has been receiving OT services since March 2007.

2. N.R.'s OT services are delivered by a certified Occupational Therapist in the petitioner's home. The therapist began services for N.R. in March 2007 at her regular prescribed rate of twenty visits every four months. Under Department regulations and policy, the first four months of OT services are not subject to prior approval, and Medicaid covered these services.

3. Based on information provided by the therapist the

Department continued to approve OT services for N.R. at a rate of twenty visits for each of the next two four-month periods.<sup>1</sup>

4. For the four-month period beginning March 29, 2008, the Department granted approval for fifteen visits instead of the requested twenty. The Department based its decision on its prevailing "consultative model" that professional OT services should begin to be tapered down after a year in the expectation that more long-term benefit and continuity is achieved as family members become trained and proficient in providing the services themselves, and school-based services are also established and coordinated with in-home therapy.

5. The petitioner appealed this decision on May 23, 2008 asking for a "restoration" of eighteen visits (one per week) for the four-month period. At a hearing held on June 9, 2008 the petitioner submitted a letter dated May 2, 2008 from a pediatrician in Boston stating, in pertinent part:

[N.R.] is a 4 year old boy whom I follow in the Developmental Medicine Center at Children's Hospital Boston for his diagnosis of Autism. Given his diagnosis of Autism which results in difficulties with his fine motor output and his adaptive functioning, it is medically necessary that he receive occupational therapy services a minimum of one time a week for an hour at a

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<sup>1</sup> In one of those periods N.R. received "prorated" Medicaid coverage for 17 visits because the therapist was late in filing required documentation. This period is not an issue in this hearing.

time (18 sessions over four months).

6. From the above letter it was clear that the pediatrician had not addressed the issue of the need for professional vs. family OT sessions. The petitioner assured the Board and the Department that she would promptly provide additional medical information pertinent to the Department's rationale, and the matter was continued to allow the petitioner to submit additional evidence.

7. In July 2008 a paralegal with Vermont Legal Aid entered an appearance for the petitioner. At status conferences held in August and September 2008 the matter was again continued to allow the petitioner's representative additional time to submit medical evidence addressing the basis of the Department's reduction in approved services.

8. In October 2008 the petitioner's legal counsel withdrew her representation. The matter was again continued to allow the petitioner to try to find another advocate.

9. At a status conference held on December 5, 2008 the petitioner advised the hearing officer and the Department that she did could not find another advocate, but that she would have N.R.'s doctors and therapist contact OVHA directly to provide the agency with additional information about N.R.'s need for continuing professional OT services at an

unreduced level. The hearing officer set a deadline of January 1, 2009 for the submission of any further evidence or professional advocacy in N.R.'s behalf.

10. At a duly-noticed telephone status conference held on January 9, 2009 the petitioner could not be reached. To date, neither the petitioner nor anyone acting in her or N.R.'s behalf has provided the Department or the Board with any medical information since the April and May 2008 letters cited above.

11. The Department has provided the petitioner, her legal advocate, and the Board with an authoritative, thorough, and detailed medical rationale of its policies regarding the gradual tapering off of professional OT services for autistic children. The Department's position that maximum long-term benefit and continuity is achieved by gradually having family and school-based services replace professional OT services has not been addressed, much less controverted, by the OT therapist or by any of NR.'s doctors. Thus, the Board has no factual basis to question the medical validity and applicability of the Department's decision in this case.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid regulations and procedures allow for an initial four months of coverage for prescribed OT. For coverage beyond four months (up to one year), "prior approval is required". W.A.M. § 4003.1, Procedures Manual § 4005(b)(3)(g). The regulations governing prior approval specifically require, inter alia, that the requested service be "medically necessary", "the least expensive, appropriate health service available", and "not experimental or investigational". W.A.M. § M106.4. In addition, the regulations defining "medical necessity" include the following provision: "Medically necessary care must be consistent with generally accepted practice parameters as recognized by health care providers in the same or similar general specialty as typically treat or manage the diagnosis or condition. . . ." W.A.M. § M107. The Board has expressly upheld the above protocols in OT cases generally (see Fair

Hearing No. 20,172), and in cases involving children who are eligible for special education.<sup>2</sup> Fair Hearing No. 19,102.

In this case the petitioner, despite having been allowed nearly a year in which to do so, has not submitted any medical evidence or opinion challenging, much less refuting, the medical basis of the Department's decision in this matter. Therefore, the Department's decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>2</sup>The petitioner has been repeatedly advised that she has additional legal remedies and rights under laws and regulations pertaining to special education.